

Procurement Procedures



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CHAPTER 1

EVOLUTION OF A REQUIREMENT

Many applications for funding envision subcontracting to accomplish parts of the project where equipment or materials are required or when the applicant does not have the necessary in-house expertise. Dollar estimates for contracting efforts are forecasted and included in the application. This preliminary decision to contract is based upon the best knowledge of the applicant and of the project requirements. Front-end logistics planning is necessary in order to avoid any duplication of effort, specifically prohibited by Government regulations.

IN ADDITION, RECIPIENT AND SUBRECIPIENT PROCEDURES WILL PROVIDE FOR A REVIEW OF PROPOSED PROCUREMENTS TO AVOID PURCHASE OF UNNECESSARY OR DUPLICATIVE ITEMS.

CHAPTER 2

THE PROCUREMENT PACKAGE

Detailed in-house planning is necessary in order to effectively award a contract.

Design specifications should be clear and concise. The specification should be developed if Competitive Sealed Bidding is to be used and the contract is to be awarded on a fixed price basis to the lowest responsible and responsive bidder. Performance Statements of Work (a general description of what is needed) are used when the proposed contract is to be negotiated.

Commitments should be made regarding the following documentation before the procurement action begins:

1. Requisition.
2. Statement of Work (negotiation).
3. Design Specifications (Competitive Sealed Bidding).
4. Competitive Negotiation: Evaluation Criteria development.
5. Sole Source Negotiation: Sole Source Justification Document.
6. All concurrences that may be required.

CHECKLIST

THE PROCUREMENT PACKAGE: CONTRACT PLANNING PROCEDURES

1. Are there funds available to let the proposed contract? Yes ☐ No ☐

2. Has a market survey been made to determine if there are contractors available to satisfy the requirement? Yes ☐ No ☐

3. Have in-house delegations been made for contract oversight responsibility?

Administrative Yes ☐ No ☐
Technical/Project Yes ☐ No ☐

4. Has a procurement method been determined?

Competitive Sealed Bidding Yes ☐ No ☐
Negotiation Yes ☐ No ☐

5. Have Statements of Work been developed?

Competitive Sealed Bidding (Design) Yes ☐ No ☐
Negotiation (Performance) Yes ☐ No ☐

6. If the contract is to be competitively negotiated, have:

Evaluation Criteria been developed? Yes ☐ No ☐

7. If the contract is to be negotiated on a sole source basis, has a Sole Source Justification been prepared? (Reference: Chapter 9) Yes ☐ No ☐

CHAPTER 3

COMPETITION

ALL PROCUREMENT TRANSACTIONS SHALL BE CONDUCTED IN A MANNER TO PROVIDE, TO THE MAXIMUM EXTENT PRACTICAL, OPEN AND FREE COMPETITION.

In order to ensure maximum open and free competition, bidder's lists should be maintained and updated, as required. Some organizations maintain a "Prequalified Bidders List," i.e., prospective bidders are prequalified as to material, equipment, and services before they are placed on the Bidders List. The awarding agency position is that the prequalification requirement may in some instances be counter to open and free competition. Accordingly, prequalified bidders lists may be used only if the awarding agency affords prospective contractors the opportunity to become "qualified" during the solicitation period.

Advertising of competitive requirements in local newspapers and trade publications is important in order to achieve more effective competition. Advertising for requirements above established monetary levels should be accommodated in accordance with established or locally developed procedures.

Local preference laws/ordinances have always required special attention by the awarding agency when there are Federal dollars involved. ACCORDINGLY, RECIPIENTS AND SUBRECIPIENTS WILL CONDUCT PROCUREMENTS IN A MANNER THAT PROHIBITS THE USE OF STATUTORILY OR ADMINISTRATIVELY IMPOSED STATE OR LOCAL GEOGRAPHICAL PREFERENCES.

CHECKLIST

COMPETITION

2. Has the Bidders List or a market survey been reviewed to determine availability of competitive contractors?

Yes ☐ No ☐

If the answer is "No", the above steps shall be accomplished to determine availability of available competitive contractors in the market place.

3. Does the Statement of Work contain attributes conducive to an "open and free competition?"

Yes ☐ No ☐

If the answer is "No," the restrictive parts should be rewritten.

3. Has "advertising" strategy been developed to allow prospective bidders ample time to request a copy of the solicitation and respond accordingly?

Yes ☐ No ☐

If the answer is "No," then the awarding agency should assure that ample time for advertising is included in determination of the forecasted award date.

CHAPTER 4

METHODS OF PROCUREMENT

The established methods of procurement are as follows:

Interdepartmental Transfer of Funds (Chapter 5)
Small Purchases (Chapter 6)
Competitive Sealed Bidding (Chapter 7)
Negotiation (Chapter 8)

Details are included in the above indicated chapters.

When determining whether a requirement should be competitively bid or negotiated, the Statement of Work plays a major role in arriving at this decision. The two basic types of Statements of Work are as follows:

- 1 . Design Work Specification (Competitive Sealed Bidding) (Reference Chapter 7),
and
2. Performance Statement of Work (Negotiation) (Reference Chapter 8).

CHAPTER 5

INTERDEPARTMENTAL TRANSFER OF FUNDS

(Normally applies to State and Local Governments and
Large Multidivisional Non-Profit Organizations)

In certain instances a viable method to satisfy a requirement is the transfer of funds to another unit of the organization where the capability exists. This can be accomplished under the following conditions:

1. Another part of the organization, i.e., in the case of a State or local government or a multi divisional NonProfit Organization, has the in-house capability to satisfy the requirement, or
2. The above-listed organizations have in existence a contractor currently performing that could effectively satisfy the requirement. This action, however, requires the awarding agency to consent to a sole source justification. Existing Basic Ordering agreements may also be used to satisfy the requirement; however, the awarding agency's consent to a sole source justification also is required.

Transfer of funds to another unit within the organization offers the following advantages:

1. Valuable procurement lead-time can be saved due to the simplicity of the funds transfer action.
2. Preparation of a Statement of Work and all the requirements of an Invitation for Bid or Request for Proposal are not necessary.

CHECKLIST

INTERDEPARTMENTAL TRANSFER OF FUNDS

1. Is there an existing contract within your Organization that can satisfy the requirement? Yes ☐ No ☐

If the answer is "yes," use of existing contract to the incumbent may be considered and funds transferred.

2. Can another Department within your Agency logistically satisfy your requirement? (Generally applies to State and local governments). Yes ☐ No ☐

If the answer is "yes," funds for accomplishment of the requirement may be transferred to that Department.

CHAPTER 6

SMALL PURCHASES

SMALL PURCHASE PROCEDURES ARE THOSE RELATIVELY SIMPLE AND INFORMAL PROCUREMENT METHODS FOR SECURING SERVICES, SUPPLIES, OR OTHER PROPERTY THAT DO NOT COST MORE THAN \$100,000 IN THE AGGREGATE.

This activity is an important part of the logistics support function. Simplified informal procedures to cut down procurement lead time for day-to-day support items should be utilized. Simplified procedures may include the following:

1. Telephone Solicitations (normally for local vendors). Price quotes are received by telephone. At least three vendors should be solicited and price, availability, delivery, etc. should be requested. The purchase order is then awarded to the vendor quoting the lowest price, all other factors considered. Supporting documentation must be maintained in the purchase order file.
2. Informal Written Quotations (not advertised). This procedure applies to more complex low dollar items when a quote in writing is desirable. Purchase Order award is made to the vendor quoting the lowest price and meeting the technical requirements.
3. Blanket Purchase Orders. Blanket Purchase Orders may be described as a "Charge Account" with a vendor to accommodate frequent recurring type requirements. Orders are placed against the Blanket and the agreed- to discount is included on the resulting invoice. Normally, billings are made by the vendor on a monthly basis. Caution should be taken to assure discipline in the authority to purchase. Orders should be placed to satisfy only legitimate grant requirements.
4. Imprest Fund (Petty Cash Fund). Paying cash for small, dollar purchases is a viable way to accommodate small dollar requirements. There is one overriding prerequisite for successful operation of the fund: Strict Dollar Accountability. Only designated personnel shall be given safe combination numbers. Any change in designated personnel requires a change in the safe combination. Cash advances may be made and reconciled with a paid invoice at the completion of the purchase.

CHECKLIST

SMALL PURCHASES

1. Is the estimated cost of the requirement below the established Small Purchase Monetary Level? Yes ☐ No ☐

If the answer is "yes", a purchase order may be used.
2. Are there available local vendors that may logistically satisfy the requirement? Yes ☐ No ☐

If the answer is "no", consider additional lead-time required to solicit vendors outside the local area.
3. May the requirement be satisfied by an existing "Blanket" purchase order? Yes ☐ No ☐

If the answer is "Yes", use the existing Blanket Purchase Order.

If the answer is "No", conduct a solicitation in accordance with the awarding agency's procedures.
4. Has the requirement been "split" to be below the mandatory purchase order monetary level? Yes ☐ No ☐

If the answer is "Yes," another method must be used.

CHAPTER 7

COMPETITIVE SEALED BIDDING

UNDER COMPETITIVE SEALED BIDDING, BIDS ARE PUBLICLY SOLICITED AND A FIRM FIXED-PRICE CONTRACT (LUMP SUM OR UNIT PRICE) IS AWARDED TO THE RESPONSIBLE BIDDER WHOSE BID, CONFORMING WITH ALL THE MATERIAL TERMS AND CONDITIONS OF THE INVITATION FOR BIDS, IS THE LOWEST IN PRICE.

This method is recognized as the preferred method of procurement and is properly used when the following conditions exist:

1. The requirement can be described and is finite and specific in detail, i.e., no unknowns or no contingencies. The contract will be awarded to the lowest (fixed price) responsive (the bid meets all the requirements of the solicitation) and responsible (the contractor has the capability in all respects) bidder to accomplish the contract requirements.
2. There is good likelihood that competition is readily available among interested contractors that could satisfy the requirement.
3. There is enough time available to issue the solicitation, conduct a public bid opening, and award the contract to the lowest responsive and responsible bidder.
4. The requirement to hold "negotiations/discussions" is not necessary and does not exist.

CHECKLIST

COMPETITIVE SEALED BIDDING

1. Is it possible to describe the requirement in exact terms so the contractor can "fix price" his bid? Yes ☐ No ☐

(Note: If a contractor must provide a deliverable for a fixed price where "unknowns" are involved, contingency dollar usually are included in the price. Then, if these contingencies do not generate/ occur, the material/service may be overpriced.)

If the answer is "Yes," an Invitation for Bid (IFB) utilizing Competitive Sealed Bidding procedures may be effectively used and the award made to the lowest responsive and responsible bidder.

2. Can it be expected that "advertising" will result in two or more responses to the Solicitations Yes ☐ No ☐

If the answer is "Yes," consider use of an Invitation for Bid (IFB).

CHAPTER 8

NEGOTIATION

THE NEGOTIATED METHOD OF PROCUREMENT IS USED WHEN THE PREREQUISITE FOR COMPETITIVE SEALED BIDDING CANNOT BE MET. THE TECHNIQUE OF COMPETITIVE PROPOSALS IS USUALLY CONDUCTED WITH MORE THAN ONE SOURCE SUBMITTING AN OFFER, AND EITHER A FIXED PRICE OR COST REIMBURSEMENT TYPE CONTRACT IS AWARDED.

Procedures involve the following:

1. Develop a performance Statement of Work listing requisite requirements to accomplish the contract, i.e., in the case of a desired service, spell out the particular problem to be solved, but don't mandate the approach the contractor must take. The performance Statement of Work should be written in a straightforward manner, and, as a minimum, should contain the following:
 - a. Background providing necessary introductory information or evolution of the requirement.
 - b. Objective/scope of work detailing broad parameters that are requisite for contract performance to effectively satisfy the requirement. (Note: Don't mandate in detail how the contractor should satisfy the objectives of the contract.)
 - c. Tasks with accompanying deliverables should be indicated in a logical sequence as the grantee perceives the requirement.
 - d. Delivery schedule in increments as required to satisfy the requirement.
 - e. Acceptance and approval procedures should be indicated.
 - f. Other coverage as may be required:
 - (1) References
 - (2) Furnished items by awarding agency
 - (3) Packing and shipping
 - (4) Any other points that require coverage.

2. Develop the Request for Proposal containing at least the basic elements specified below, and before release, advertise the solicitation in accordance with local procedures.
3. The Request for Proposal normally will contain the following:
 - a. Letter of Transmittal (or local standard form) providing certain relevant details concerning the requirement.
 - b. A delivery schedule to be included in the definitive contract, including all necessary administrative details.
 - c. The Statement of Work (see 1, above).
 - d. Required special and mandatory clauses. (Reference: Chapter 10)
 - e. Any special instructions to offerors to assist in developing the offer.
 - f. A listing of evaluation criterion to be used by the grantee in the evaluation of the offers received. Percentage weights may be assessed each criterion or the order of importance of each indicated criterion may be shown.
 - g. Any other information that may be required for the offerors to completely understand the contents and intent of the Request for Proposal.
4. Proposal evaluation of the offers received resulting from the Request for Proposal (RFP) shall be accomplished in accordance with grantee procedures. Each proposal shall be scored based upon the evaluation criteria contained in the RFP. Evaluation criteria shall not be changed after receipt of offers.
5. Negotiations shall be conducted with those offerors submitting the most promising proposals in accordance with the determination of a selection official designated by the awarding agency for that purpose.

CHECKLIST

NEGOTIATION

1. Is it necessary to resolve technical questions/unknowns by negotiations with the successful contractor? Yes ☐ No ☐

If the answer is "yes," this requirement is a candidate for negotiation.

2. Is it necessary to develop a "performance" Statement of Work, instead of a "design" specification spelling out finitely what is needed? Yes ☐ No ☐

If the answer is "yes," negotiation should be used.

CHAPTER 9

SOLE SOURCE CONTRACTING

As indicated in Chapter 3, recipients are mandated to compete contractual requirements. There are, however, exceptions to this cardinal rule of competition. These exceptions result in "sole source" contracting. PROCUREMENT BY NONCOMPETITIVE PROPOSALS IS PROCUREMENT THROUGH THE SOLICITATION FROM ONLY ONE SOURCE, OR AFTER SOLICITATION OF A NUMBER OF SOURCES, COMPETITION IS DETERMINED INADEQUATE. Both the A-102 Common Rule and OMB Circular A-110 are quite clear regarding the necessity to have open and free competition to satisfy contractual requirements.

Recipients may make the initial determination that competition is not feasible if one of the following circumstances exists:

1. The item on service is available only from a single source (see the attached format to be submitted to the awarding agency for consent).
2. The public exigency or emergency of the requirement will not permit a delay resulting from a competitive solicitation.
3. After solicitation of a number of sources, competition is considered inadequate.

In any event, documentation reflecting actions taken and the position of the grantee is extremely important in order to establish an audit trail.

The following issues should be considered when formulating the decision to request consent to sole source:

Bidders List: Recipients should continually develop and maintain a Bidders List by functional category. Procedures should be developed for updating the Bidders List in order that it may be kept current.

Removal from the Bidders List is justified when a pattern of continual "no response" is indicated. If the Bidders List is not considered adequate, a market survey of the market place should be conducted.

- Time Frames: Can it unequivocally be shown that desired time frames for delivery must be met or the entire project will suffer? Short delivery schedules sometimes stifle competition.

An attachment to this chapter is self-explanatory and contains a format to be followed when requesting consent from the awarding agency to contract sole source. Awarding agency consent is required for all proposed sole source contracts over \$100,000.

CHECKLIST

FORMAT

JUSTIFICATION FOR NON-COMPETITIVE PROCUREMENT (SOLE SOURCE CONTRACTING)

- PARAGRAPH 1 - A BRIEF DESCRIPTION OF THE PROGRAM AND WHAT IS BEING CONTRACTED FOR
- PARAGRAPH 2 - EXPLANATION OF WHY IT IS NECESSARY TO CONTRACT NONCOMPETITIVELY, TO INCLUDE THE FOLLOWING:
- EXPERTISE OF THE CONTRACTOR
 - MANAGEMENT
 - RESPONSIVENESS
 - KNOWLEDGE OF THE PROGRAM
 - EXPERIENCE OF CONTRACTOR PERSONNEL
 - RESULTS OF A MARKET SURVEY TO DETERMINE COMPETITION AVAILABILITY OR, IF ONE WAS NOT CONDUCTED, WHY NOT?
- PARAGRAPH 3 - TIME CONSTRAINTS:
- WHEN CONTRACTUAL COVERAGE IS REQUIRED AND WHY
 - IMPACT ON PROGRAM IF DATES ARE NOT MET
 - HOW LONG WOULD IT TAKE ANOTHER CONTRACTOR TO REACH THE SAME LEVEL OF COMPETENCE? (EQUATE TO DOLLARS, IF DESIRED)

- PARAGRAPH 4 - UNIQUENESS
- PARAGRAPH 5 - OTHER POINTS THAT SHOULD BE COVERED TO "SELL THE CASE"
- PARAGRAPH 6 - A DECLARATION THAT THIS ACTION IS IN "BEST INTERESTS" OF THE AGENCY

CHAPTER 10

CONTRACT PROVISIONS

Federal regulations require that contracts made by the awarding agency contain the clauses as enumerated below. Recipients may develop language suited to accommodate a specific contractual situation, providing such clauses meet the intent of the federal clauses.

1. Disputes.

This clause should provide contractor recourse procedures in the event there is a contractual dispute. The dispute submitted by the contractor shall be in writing to the contracting officer (person signing the contract for the grantee). Procedures shall provide at least one additional upper management level for review within the awarding agency. The reply from the recipient shall be in writing and include general counsel concurrence (optional).

2. Reporting.

Any applicable reporting requirements affecting contractual activity in order to comply with requirements of the award should be included as a special contract clause developed by the recipient. Of particular importance are Progress/Status/Performance reports (usually on a quarterly basis) required for contracts for research and development, studies, surveys, analyses, etc. Progress reports also play an important role in equating progress to payments or cost reimbursement contracts.

3. Patents.

Any discovery or invention that arises during the course of the contract shall be reported to the awarding agency. This clause should require the contractor to disclose inventions to the contracting officer within 2 months after the inventor discloses it in writing to contractor personnel responsible for patent matters. The clause should also contain and identify provisions identifying the grantee against liability, including costs for infringement of any United States patent.

4. Rights in Data and Copyrights.

As a general rule, contracts that require data to be produced, furnished, acquired or specifically used in meeting contract requirements must contain terms that delineate the respective rights of the awarding agency and the contractor regarding use, duplication, and disclosure of such data.

5. Examination of Records.

This clause shall state that the recipient, the subrecipient, the Federal awarding agency, the Comptroller General, or any of their representatives shall have access to any books, documents, papers and records of the contractor which are directly pertinent to the contract for the purpose of making audit, examination, excerpts, and transcriptions. The clause shall further state that the contractor shall retain all required records for three years after the recipient or subrecipients make final payments and all other pending matters are closed.

6. Clean Air and Water.

If the contract exceeds \$100,000.00, the contractor must agree to comply with all requirements of Section 114 of the Clean Air Act and Section 308 of the Clear Water Act relating to inspection, monitoring, entry, reports, and information as well as other requirements specified. The contractor also must agree that no work will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities.

7. Equal Employment Opportunity.

This clause applies to contracts over \$10,000.00 and shall contain provisions that the contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Affirmative Action Clauses shall be developed as required by rules and regulations of the Secretary of Labor.

8. Termination.

Only the awarding agency has the right to terminate the contract. There are two types of terminations:

- Termination for Convenience; and
- Termination for Cause.

The awarding agency has the option of tailoring the termination clause to fit the type of contract, i.e., fixed price or cost reimbursement.

The awarding agency, by written notice, may terminate the contract, in whole or in part, when it is in the awarding agency interest.

a. Termination for Convenience.

Contract is terminated due to reasons known to the grantee, i.e., program changes, changes in state-of-the-art, insufficient funding, etc. This type of termination is utilized when the contractor is not in violation of the contract terms and conditions.

b. Termination for Cause.

Contract is terminated due to actions by the contractor, i.e., failure to perform, financial difficulty, slipped schedules, etc. In certain instances, termination settlement may include procurement costs to be paid by the contractor.

Termination settlements shall be accommodated by negotiations carefully planned in order to achieve an equitable resolution.

CHAPTER 11

CONTRACT TYPE SELECTION

THE TYPE OF PROCURING INSTRUMENTS USED, e.g., FIXED PRICE CONTRACTS, COST REIMBURSABLE CONTRACTS, PURCHASE ORDERS, INCENTIVE CONTRACTS, SHALL BE DETERMINED BY THE AWARDING AGENCY BUT MUST BE APPROPRIATE FOR THE PARTICULAR PROCUREMENT AND FOR PROMOTING THE BEST INTEREST OF THE PROGRAM INVOLVED.

1. Fixed Price.

By the very nature of the method, all contracts awarded under Competitive Sealed Bidding result in some type of "fixed price" arrangement, normally a firm fixed price. In certain instances, fixed price contracts are the preferred type inasmuch as the risk rests with the contractor. In certain instances, fixed price contracts may also be negotiated when it is determined that "across the table" discussions with the contractor are required. Firm fixed price contracts are appropriate when:

- a. It is possible to describe exactly what is needed to satisfy the requirement;
- b. Across the table discussions are determined not necessary; and
- c. It is determined that there is adequate competition available.

Other types of fixed price contracts are:

- Fixed Price with Escalation (normally called "Fixed Price with Economic Price Adjustment")
- Fixed Price Incentive

The above-listed contracts are summarized on the chart following this chapter.

2. Cost Reimbursement.

Contractors should be reimbursed for their actual expenditures (no accruals may be reimbursed) no more often than bi-weekly. Normally, contractors are reimbursed in monthly increments. Some governmental organizations permit withholding of a small percentage of each reimbursement request to ensure final delivery and contract close-out. Inasmuch as contractors are incrementally reimbursed as the contract progresses, the risk to the contractor is minimized. The most common type of cost reimbursement contract is the Cost Plus Fixed Fee (CPFF). In this type of contract the fee (on fixed price contracts it is defined as profit) is negotiated front-end and does not change. On cost reimbursement contracts, a ceiling is placed on the estimated cost. Even though additional dollars may be added under certain conditions, the fee does not change as long as the contract remains in-scope. Any contractual situation that automatically increases the fee when additional dollars are added is known as 'cost plus percentage of cost' and is illegal. Other types of cost reimbursement contracts are:

- Cost Contracts
- Cost Sharing Contracts
- Cost Plus Incentive Fee Contracts

The above-listed contracts are summarized on the chart following this chapter.

3. Other Contract Types.

- a. Time and Materials Contracts contain specified fixed hourly rates. Contract agrees that any materials purchased will be at the contractor's cost. Hours involved in contract execution must be negotiated. This type of contract will be used when the awarding agency makes a determination that no other type of contract is suitable and the contraction shall not exceed any ceiling price included in the contract.
- b. Labor Hour Contracts are identical to Time and Materials Contracts except that no materials are involved.
- c. Indefinite Delivery Contracts are used when exact time of delivery is unknown.

- d. Letter Contracts are used when exigency requires an immediate binding agreement so work can begin, but time does not permit negotiation of a definitive contract. When the definitive contract is awarded, the letter contract is superseded and letter contract dollars expended will be incorporated in the definitive contract.

More summary details are included on the chart following this chapter.

CHECKLIST

CONTRACT TYPE SELECTION

1. Can the deliverables be specifically identified and the quality measurable? Yes ☐ No ☐

If the answer is "yes," then a Fixed Price Contract may be properly utilized, either by using competitive sealed bidding procedures, or, if discussions are necessary, negotiation procedures.

2. Should the contractor logically be able to assume the "risk" for contract performance? Yes ☐ No ☐

If the answer is "yes," a fixed price contract is appropriate.

3. Is the contractor's accounting system capable of segregating costs so proper charges may be made to the grantee contract for invoicing purposes? Yes ☐ No ☐

If the answer is "no," another type of contract other than cost reimbursement must be used.

4. Realizing that cost reimbursement contracts require more contract administration responsibilities, is the awarding agency prepared to accept this responsibility? Yes ☐ No ☐

If the answer is "no," steps must be taken to correct the deficiency and meet this responsibility before the contract is awarded.

5. Time and Materials indefinite quantity, and requirements contracts require that orders against the contract be negotiated and placed before the contractor begins work. Will the awarding agency be in a position to describe individual tasks to be accomplished as they generate?

Yes ☐ No ☐

If the answer is “no”, consideration should be given to other contractual types.

6. Concerning “Letter Contracts,” are monetary limits along with a target date for definitization shown on the document?

Yes ☐ No ☐

If the answer is “No”, the letter contract should be changed to accommodate these two points.

GUIDE TO SELECTION OF CONTRACT TYPES

| | APPLICABILITY | ESSENTIAL ELEMENTS | LIMITATIONS |
|-----------------------------|--|---|---|
| FIRM-FIXED PRICE | <p>Fair and reasonable price can be established at inception, e.g.</p> <ul style="list-style-type: none"> - Reasonably definite design or performance specifications; - Realistic estimates; - Adequate competition; and - Valid cost or operating data that provide reasonable price Comparisons. | Initial fixed-priced places 100% responsibility and risk on contractor. | Government and contractor must agree on fixed-price at inception. |
| FIXED-PRICE WITH ESCALATION | Market or labor conditions unstable over extended production period. | Ceiling on upward adjustment; downward adjustment appropriate where elements escalated may fall below base levels provided in contract. | Contingencies are industry-wide and beyond contractor control; contingencies must be specifically defined in the contract. |
| FIXED-PRICE INCENTIVE | <p>Where cost uncertainties exist and there is the possibility of cost reduction and/or performance improvements by giving contractor (i) a degree of cost responsibility and (ii) a positive profit incentive.</p> <p><u>Firm Target Type</u>: Firm target and final profit adjustment formula can be negotiated initially.</p> | <u>Firm Target</u> : Target cost; target profit; price ceiling; and profit adjustment formula. | Adequate Contractor Accounting System Required. Must determine that any other contract type is impractical. Used for development and production procurement. |
| COST AND COST SHARING | <p>Uncertainties in Performance - Impossible to Estimate Costs Firmly.</p> <p><u>Cost</u>: R&D with non-profit organizations or educational institutions; facilities contracts.</p> <p><u>Cost Sharing</u>: Development or research projects jointly sponsored by government and contractor where contractor anticipates commercial benefit in lieu of fee under the contract.</p> | <p>Uncertainties in Performance - Impossible to Estimate Costs Firmly.</p> <p><u>Cost</u>: Government pays cost; no fee.</p> <p><u>Cost-Sharing</u>: Government pays agreed predetermined portion of costs; no fee.</p> | <p>Adequate Contractor Accounting System Required.</p> <p><u>Cost-Sharing</u>: Must present evidence that there is high probability that contractor will receive substantial present or future commercial benefits.</p> |

| | APPLICABILITY | ESSENTIAL ELEMENTS | LIMITATIONS |
|--|---|--|---|
| COST-PLUS INCENTIVE FEE | Uncertainties in Performance - Impossible to Estimate Costs Firmly. Development and test when incentive formula can provide positive incentive for effective management. Where feasible, use performance incentives together with cost and schedule incentives | Uncertainties in Performance – Impossible to Estimate Costs firmly. Target cost; target fee; minimum and maximum fee; fee adjustment formula (formula applied at end of performance) | Adequate Contractor Accounting System Required. <u>Fee Limitations:</u> Production and Services - 10% est cost; R&D - 15% est cost. Formula should provide incentive effectiveness over variation in costs throughout the full range of reasonable foreseeable variation from target cost. |
| COST-PLUS- FIXED-FEE | Uncertainties in Performance –Impossible to Estimate Costs Firmly. <u>Term Form:</u> Research preliminary exploration, or study when level of effort is initially unknown (or development and test when a CPIF is impractical). <u>Completion Form:</u> Research or other development effort when the task or job can be clearly defined, a definite goal or target expressed, and a specific end product required. | Uncertainties in Performance - Impossible to Estimate costs Firmly. Negotiated estimate of costs; fee fixed initially except for changes in the work or services required. | Adequate Contractor Accounting System Required. <u>Fee Limitations:</u> Production and Services –10% est cost; R&D –15% est cost. Not for development of major weapons once exploration indicates engineering development is feasible. |
| TIME AND MATERIALS (LABOR-HOURS) | Not possible initially to estimate extent or duration of work (L-H used where materials not involved), e.g., engineering or design services; repair, maintenance, or overhaul. | Direct labor hours specified at fixed hourly rates; direct materials at “cost.” Ceiling price shall be established. | Determination that no other type of contract is suitable. |
| LETTER CONTRACT | Exigency requires immediate binding agreement so work can begin but time does not permit negotiation of a definitive contract. | Maximum government liability, type of definitive contract, as many definitive contract provisions as possible. | No other contract type suitable. |
| INDEFINITE DELIVERY | Exact time of delivery unknown. <u>Definite Quantity:</u> Quantity known, delivery period can be specified; supplies available or have a short lead time. <u>Requirements:</u> Preciseness of designated activities during a definite period not known initially. <u>Indefinite Quantity:</u> Impossible to know precise quantities needed by designated activities during a definite period and government cannot commit itself beyond a minimum. | <u>Definite Quantity:</u> Provision for delivery to designated points or upon order. <u>Requirements:</u> Estimated total quantity; maximum and minimum total quantity where feasible; maximum and minimum order where appropriate. <u>Indefinite Quantity:</u> Stated maximum and minimum total quantity; maximum and minimum order where applicable. | Firm fixed-price, fixed-price with escalation, or fixed-price with redetermination only. |

CHAPTER 12

CODE OF CONDUCT

RECIPIENTS AND SUBRECIPIENTS WILL MAINTAIN A WRITTEN CODE OF STANDARDS OF CONDUCT GOVERNING THE PERFORMANCE OF THEIR EMPLOYEES ENGAGED IN THE AWARD AND ADMINISTRATION OF CONTRACTS.

Conflicts of interest (or the appearance thereof) continually plague contractual activity supported by governmental funds. No employee, officer, or agent of the awarding agency shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict arises when:

1. The employee, officer or agent, or
2. Any member of his/her immediate family, or
3. His or her partner, or
4. Any organization which employs, or is about to employ, has a financial or other interest in the firm being evaluated or selected for award.

For the above reason, personnel involved in the procurement process must be continually and forever alert to situations that may create a real, or even the appearance of, a conflict of interest. Common sense and adherence to standard and customary codes of conduct will go a long way toward eliminating potential problems.

However, this alone is not enough. Awareness and avoidance of sensitive situations should be a primary individual objective. The awarding agency personnel should:

1. Be familiar with any code of ethics guidance published or available to their organization.
2. Not take gifts and gratuities from persons or Organizations associated with the procurement process. In this connection, the awarding agency may set minimum rules where the financial interest is not substantial or the gift is

an unsolicited item of nominal intrinsic value.

3. Avoid, at all times, even the appearance of a conflict of interest.
4. Assure that proposal evaluators (price and technical) or members of their immediate families do not own stock or have other financial interest in the companies being evaluated.
5. Refer any problem that arises concerning conflict of interest to upper management and legal counsel, if appropriate.

Recipients are required to maintain a written code of standards of conduct concerning the performance of employees engaged in the award and administration of contracts.

CHECKLIST

CODE OF CONDUCT

1. Is there any indication that there is any inappropriate action on the part of either the awarding agency or the contractor from either an individual or organizational conflict of interest standpoint?

Yes ☐ No ☐

If the answer is "yes," the awarding agency's top management, in concert with legal counsel, should determine the severity of the problem and enforce sanctions and notify proper authorities.

2. Is there any indication that the Statement of Work might be restrictive?

Yes ☐ No ☐

If the answer is "yes," the Statement of Work must be corrected and the RFP amended or canceled, as appropriate.

3. Have there been any protests or hints of improprieties from any outside sources?

Yes ☐ No ☐

If the answer is "yes," the validity must be determined and action taken accordingly.

4. Has there been any appearance of conflicts of interest relating to the proposed contractual action?

Yes ☐ No ☐

If the answer is "Yes", a thorough investigation should be conducted and any required corrective action taken.

5. Have cost and technical evaluation committee members evaluating proposals under competitive

negotiation procedures signed a statement confirming the fact that they or members of their immediate families do not own stock in the companies being evaluated?

Yes ☐ No ☐

If the answer is "No", a signed statement should be required of each evaluator.

6. Has "brand name or equal" been used excessively in similar solicitations that might be interpreted as leading to a conflict of interest situation?

Yes ☐ No ☐

If the answer is "Yes", the work specification, if possible, should be expanded in order to achieve more competition.

CHAPTER 13

PRICE AND COST ANALYSIS

A PRICE OR COST ANALYSIS SHOULD BE MADE IN CONNECTION WITH EVERY PROCUREMENT ACTION.

Definitions:

Price Analysis involves a comparison of the bottom line price quoted by the offeror with prices paid on other contracts for the same or similar materials or services; a review of trade publications for comparability; a comparison of prices quoted by other respondents to the solicitation (does not apply to sole source contracts); and any other comparison available to the awarding agency. The purpose of price analysis is to determine that the price quoted is within range of acceptability to the awarding agency.

Cost Analysis involves an analysis of the individual elements of cost (as requested by the solicitation) as stated in the contractor's cost proposal. Examples of individual elements of cost include direct labor, fringe benefits, overhead, materials, travel, subcontracts, etc. Questionable individual elements of cost become negotiation targets for the awarding agency during the subsequent negotiation with the contractor.

Price and Cost Analysis is required for all proposals submitted by offerors for evaluation and negotiation by the awarding agency. Contents of the cost proposal should be in consonance with the contractor's accounting system which must be operationally capable of segregating costs by contract. Offerors should certify that individual elements of cost are true, correct and verifiable from the contractor's accounting system.

In order to show pictorially each contractor's cost proposal, spreadsheets are recommended for use by the awarding agency. However, keep in mind that accounting systems differ between contractors and exact dollar comparison between individual cost elements may not constitute a valid comparison. For example, one contractor may charge a certain expense item to overhead, whereas another contractor may charge an identical expense item as a "direct" charge to the contract.

Price Analysis and Cost Analysis are normally used in concert with each other. Each

should support the other.

From an operational standpoint, this important facet of an effective negotiation plan cannot be overlooked or minimized.

CHECKLIST

PRICE AND COST ANALYSIS

1. Is the total price. determined to be fair and reasonable? Does it compare favorably with the sum total of the individual elements of cost that have been analyzed? Yes ☐ No ☐

If the answer is "no" (with a limited tolerance allowed), then further effort is required to make these two figures more compatible.

2. Was the overhead rate used in the contractor's proposal determined by audit? Yes ☐ No ☐

If the answer is "yes," determine when audit was completed and whether the overhead rate can be categorized as current.

If the answer is "no," determine on what basis the overhead rate was calculated and then validate acceptability.

3. Was a spread sheet used to show pictorially a comparison of the elements of cost? Yes ☐ No ☐

Even though a spread sheet is not mandatory, its use is highly recommended.

4. Were individual results from cost analysis used to determine negotiation cost targets? Yes ☐ No ☐

Remember the proposal is the contractor's. Justification is required for any element of cost questioned by the awarding agency.

5. If possible, awarding agency should adhere to maximum Federal fee limitations under cost reimbursement arrangements, i.e., 10% on estimated cost, 15% of the estimated cost on Research and Development, and 6% of the estimated cost of Construction on Architectural Engineering. Does the negotiated fee fall within these stated limitations?

Yes ☐ No ☐

If the answer is "no," consider alternatives with upper management within the awarding agency.

CHAPTER 14

PROTESTS

IN ACCORDANCE WITH SOUND ADMINISTRATIVE PRACTICE AND SOUND BUSINESS JUDGEMENT, RECIPIENTS AND SUBRECIPIENTS ALONE WILL BE RESPONSIBLE FOR THE SETTLEMENT OF ALL CONTRACTUAL AND ADMINISTRATIVE ISSUES ARISING OUT OF PROCUREMENT.

Any contractor or aggrieved party has the right to protest actions before or after the award of the contract. In accordance with good administrative practice and sound business judgement, the awarding agency shall be responsible for the settlement of all contractual responsibilities arising out of contract solicitations and awards. Issues that might initiate a protest are:

1. Proposal evaluation activity (competitive negotiations).
2. Disputes (differences of opinion).
3. Conflicts of interest.
4. Any other pertinent issues.

Protests should be in writing to the awarding agency, inasmuch as the awarding agency is responsible for actions under its contracts. The awarding agency shall follow local procedures for resolution in order that effective due process may be achieved.

In summary, the awarding agency is responsible for handling and resolving all contractual activity protests. Only in rare instances would the Federal awarding agency intervene. However, this should not be construed that Federal advice should not be sought when considered appropriate by the awarding agency.

CHECKLIST

PROTESTS

1. Has the aggrieved party submitted his protest in writing? Yes ☐ No ☐

If the answer is "no," consider recommending that the protest be submitted in writing if the magnitude is great enough to have serious operational impact.

2. Has grantee top management been alerted to the seriousness of the protest and has legal counsel been sought? Yes ☐ No ☐

If the answer is "No", top management and legal counsel should be advised.

3. Has the recipient exerted ample effort toward resolution of the protest before seeking help from Federal awarding agency? Yes ☐ No ☐

If the answer is "No", then the recipient should exert ample effort toward resolution before seeking help from the Federal awarding agency.

CHAPTER 15

CONTRACTING WITH SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISES AND LABOR SURPLUS AREA FIRMS

THE RECIPIENTS AND SUBRECIPIENTS WILL TAKE ALL NECESSARY AFFIRMATIVE STEPS TO ASSURE THAT THE FOLLOWING FIRMS ARE USED, WHEN POSSIBLE:

- Small Business Firms -- Designated by the Small Business Administration
- Minority Business Firms -- 51 % Minority Owned/Operated
- Women's Business Enterprises -- Small business that is at least 51 % owned by a woman or women.
- Labor Surplus Area Firms -- Firms geographically located in distressed labor surplus areas designated by the Secretary of Labor

Recipients shall assure the following actions are taken in dealing with the above listed firms:

1. Placement on Bidders List;
2. Ensuring that solicitations are mailed;
3. Allocating requirements into smaller amounts, when feasible, to permit maximum participation;
4. Establishing delivery requirements, when feasible, for compatibility with capability of the above-listed firms.

Notwithstanding the fact that no contracting goals are established, the recipient is expected to provide statistics on contract awards to the- Federal awarding agency upon request.

CHECKLIST

CONTRACTS WITH SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISES AND LABOR SURPLUS AREA FIRMS

1. Are statistics readily available concerning contract awards to these firms? Yes ☐ No ☐

If the answer is "no," develop simplified reporting system.

CHAPTER 16

CONTRACT ADMINISTRATION

RECIPIENTS AND SUBRECIPIENTS WILL MAINTAIN A CONTRACT ADMINISTRATION SYSTEM WHICH ENSURES THAT CONTRACTORS PERFORM IN ACCORDANCE WITH THE TERMS, CONDITIONS, AND SPECIFICATIONS OF THEIR CONTRACTS OR PURCHASE ORDERS.

Contract administration refers to post award actions by the awarding agency to ensure that the terms and conditions of the contract are met. It takes continual vigilance on the part of the awarding agency to ensure that contract deliverables are met to accommodate mandated project requirements.

1. Delegations. Management in the awarding agency shall delegate administration responsibility to designated personnel selected for their technical and administrative capability to administer the contract effectively. Any disagreement between technical and administrative personnel shall be referred to top level management within the awarding agency for resolution.
2. Inspection and Acceptance. Contractor deliverables shall be inspected before official acceptance by the awarding agency to ensure that contract requirements have been met. Acceptance shall be made officially only after the awarding agency determines that contract terms and conditions have been met.
3. Progress Reports. Under cost reimbursement contracts, progress/status reports are required normally by the Statement of Work. These reports shall be reviewed by the awarding agency to determine if contract delivery milestones are being met, and, if they are not, the seriousness of the delinquency should be analyzed and, if appropriate, corrective action taken.
4. Invoice Processing. Under cost reimbursement contracts, reimbursement invoices are submitted normally by the contractor on a monthly basis. However, in the case of a small or disadvantaged contractor, invoices may be submitted every two weeks. There must be a correlation between dollars paid incrementally to the contractor and contract progress in consonance with an acceptable tolerance level that is established. Invoices should be processed as expeditiously as possible with dollar hold-backs (to be paid after completion/final acceptance) considered in determining the net amount of the incremental dollar reimbursement.

5. Property Administration. Title to any property purchased by the contractor with Federal funds remains with the awarding agency. The recipient is responsible for all property management functions and strict accountability for all property purchased or furnished by the Federal government. Contractor use of excess property from Federal sources is encouraged by the Federal awarding agency.
6. Consent to Subcontract. The awarding agency shall establish procedures to review and give prior consent for subcontracts awarded by the prime contractors. Monetary consent levels may be established at the discretion of the awarding agency.
7. Awarding Agency Contract Close-out. The awarding agency's close-out of a contract is an important function of contract administration and may be characterized logically as the last of the many functions related to contract administration.

CHECKLIST

CONTRACT ADMINISTRATION

1. Delegations.

Have delegations been made in writing to include all operational and administrative aspects of contract post award activity?

Yes ☐ No ☐

If the answer is "no," action should be taken to have proper delegations made in writing.

2. Inspection and Acceptance.

For materials and hardware, do invoices submitted by the contractor include evidence of acceptance by the grantee?

Yes ☐ No ☐

If the answer is "No", the invoice shall not be paid until evidence of acceptance is indicated.

On cost reimbursement contracts, before acceptance by the grantee, has contract dollar reimbursements been reconciled with available contract specified funding?

Yes ☐ No ☐

If the answer is "No", procedures shall be developed to verify funding availability before acceptance is made.

3. Progress Reports (Cost Reimbursement Contracts).

Are progress reports reviewed to validate correctness and to determine if contract delivery schedules/ milestones are being met?

Yes ☐ No ☐

If the answer is "no", progress related to milestones should be analyzed to determine contract status. If the contractor is in violation of the contract requiring progress reports, action should be taken to enforce the contract terms and conditions.

4. Invoice Processing.

Are invoices submitted by the contractor for materials and equipment analyzed by the awarding agency before authorizing payment?

Yes ☐ No ☐

If the answer is "No", procedures shall be developed to analyze all invoices submitted to assure acceptability.

Under cost reimbursable contracts, are the dollars requested by the contractor compatible with progress indicated on status reports?

Yes ☐ No ☐

If the answer is "No", percent of contract completion indicated on progress reports should be compatible with total funds requested for reimbursement.

Is availability of funds determined before approval of the invoice authorizing payment?

Yes ☐ No ☐

If answer is "No", funds availability must be determined before authorizing the invoice for payment.

5. Property Administration.

Does the awarding agency maintain a system for strict accountability for both expendable supplies and property purchased under the contract or furnished by the Federal awarding agency?

Yes ☐ No ☐

If answer is "No", a system of accountability, including tagging of property, shall be developed.

Is government furnished property (GFP) inventoried at established intervals?

Yes ☐ No ☐

If the answer is "no," a schedule for recurring inventory of GFP should be established.

6. Consent to Subcontract.

Before consent is given by the awarding agency to prime contractors to subcontract, are the following points considered:

- a. Did the prime contractor get adequate competition to satisfy the requirement? Yes ☐ No ☐
- b. Does the subcontract include a "flow-down" of mandatory clauses included in the prime contract? Yes ☐ No ☐
- c. Is any apparent conflict of interest indicated? Yes ☐ No ☐
- d. On cost reimbursable contracts, did the evaluation of proposals include:
 - 1) A technical evaluation based upon evaluation criteria contained in the solicitation? Yes ☐ No ☐
 - 2) A price and cost analysis of top-ranked proposals? Yes ☐ No ☐
- e. Was the proper type of contract used? Yes ☐ No ☐
- f. If the subcontract is on sole source basis, is the sole source justification adequate? Yes ☐ No ☐
- g. Was the documentation supporting the request for consent to subcontract submitted before contract award, and is it considered adequate? Yes ☐ No ☐

If any of the answers are "no," consent should be withheld, the reasons investigated, and problems resolved before consent is given.

7. Contract Close-out.

- a. Have all contract funds been reconciled?
Have any remaining funds been deobligated?
Have all invoices been paid? Yes ☐ No ☐
- b. Has any property furnished or purchased by
the awarding agency been returned or accounted for
in accordance with existing procedures? Yes ☐ No ☐
- c. Has the awarding agency received a certification
from the contractor that all bills relating
to the contract have been paid? Yes ☐ No ☐
- d. Have all contract deliverables been
inspected and accepted by the awarding agency? Yes ☐ No ☐
- e. Have any law suits/legal actions relating
to contract activity been settled? Yes ☐
No ☐
- f. On cost reimbursement contracts, is the
awarding agency satisfied that all claimed costs
are allowable costs relating to contract
activity? Yes ☐ No ☐
- g. Has a bilateral amendment been executed
reflecting contract close-out? Yes ☐ No ☐

Note: Contract close-out is not complete if any
of the above questions reflect a "No"
response.

CHAPTER 17

OTHER CONSIDERATIONS

1. Lease vs. Purchase.

Before entering into a leasing arrangement for equipment, a lease-purchase analysis should be performed by the awarding agency to determine economic feasibility. This analysis should reflect a comparison of forecasted costs for both an outright purchase and a leasing arrangement, including the cost of money. If determination is made to enter into a lease/purchase, the awarding agency shall assure that a certain part of the lease cost (dollars) will apply toward the purchase price of the equipment (indicated in the lease). In addition, the awarding agency shall assure that at a predetermined time, the equipment under lease is either:

- a. Purchased under the terms of the lease, or
- b. Returned to the lessor and action taken to cancel the lease.

2. Documentation.

RECIPIENTS AND SUBRECIPIENTS WILL MAINTAIN RECORDS SUFFICIENT TO DETAIL THE SIGNIFICANT HISTORY OF A PROCUREMENT. THESE RECORDS WILL INCLUDE, BUT ARE NECESSARILY LIMITED TO THE FOLLOWING: RATIONALE FOR THE METHOD OF PROCUREMENT, SELECTION OF CONTRACT TYPE, CONTRACTOR SELECTION OR REJECTION, AND THE BASIS FOR THE CONTRACT PRICE.

It is extremely important that the awarding agency document contractual actions in order to formulate and maintain an audit trail. The official contract file should reflect in detail all of the steps in the procurement process and serves as the official accountability document.

(Reference Chapter 10, clause 5 "Examination of Records.")